

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW MEXICO**

**ERICA GARCIA and COSME BARELA,**  
Plaintiffs,

v.

**Civil Action No.** \_\_\_\_\_

**GEICO INDEMNITY COMPANY,**  
Defendant.

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**NOTICE OF REMOVAL**

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COMES NOW, Defendant GEICO Indemnity Company (hereafter, “GEICO”), by and through its attorneys, Resnick & Louis, PC (John A. Frase for the contractual claims) and Perry Law, PC (Meloney Perry and Stacy Thompson for the extra-contractual claims), and hereby files its Notice of Removal pursuant to 28 U.S.C. §§1332, 1441 and 1446, and in support thereof states the following:

1. Plaintiffs Erica Garcia and Cosme Barela (hereafter “Plaintiffs”) filed their Complaint for Declaratory Judgment and Damages, (hereinafter “Complaint”). *See* Plaintiffs’ Complaint, hereto attached as Exhibit A.

2. Plaintiffs’ Complaint was filed in the Second Judicial District Court, County of Bernalillo, State of New Mexico, as Cause Number D-202-CV-2017-02810 on April 21, 2017. (hereinafter “State Court Action”). *See Id.*

3. Defendant GEICO was served through the Superintendent of Insurance who accepted service on behalf of GEICO, on June 12, 2017, therefore, removal is timely. *See* June 12, 2017 Letter from New Mexico Superintendent of Insurance attached hereto as Exhibit B.

4. Plaintiffs allege they are residents of Bernalillo County, New Mexico. *See* Exhibit A at ¶ 1.

5. Plaintiffs do not make any allegations as to the citizenship of GEICO but does admit GEICO is a company licensed to do business in New Mexico. *See also* generally Exhibit A.

6. Plaintiffs do not make any allegations as to the principal place of business of GEICO but does admit GEICO is a company licensed to do business in New Mexico. *See also* generally Exhibit A.

7. Defendant GEICO is incorporated in Maryland and its principal place of business is in Maryland.

8. Pursuant to 28 U.S.C. § 1441(b)(2), removal based on diversity of citizenship requires that no properly joined and served party of interest diversity be a citizen of the State in which such action is brought. 28 U.S.C. § 1441(b)(2).

9. A federal district court possesses original subject-matter jurisdiction over a case when the parties are diverse in citizenship and the amount in controversy exceeds seventy-five thousand dollars. 28 U.S.C. § 1332(a).

10. Given the diversity of citizenship, this case may be removed to this Court by GEICO pursuant to the provisions of 28 U.S.C. §§ 1441(b) and 1446.

11. To confer subject matter jurisdiction on this Court based on diversity of citizenship, the amount in controversy must exceed the sum or value of \$75,000.00, exclusive of interest and cost. 28 U.S.C. §1332(a). Where a complaint does not contain dispositive allegations of the amount in controversy, the jurisdictional amount is determined by the allegations in the underlying complaint. *See e.g., Laughlin v. Kmart Corp*, 50 p.3d, 871, 873 (10 Cir. 1995). Calculations of the amount in controversy include both compensatory and punitive damages. *See, e.g., Bell v. Preferred Life Assur. Soc'y* 320 U.S. 238, 240 (1943); *Watson v. Blakenship*, 30 F.3d

383, 386 (10 Cir.1994). This calculation also includes attorney's fees. *See Miera v. Dairyland Ins. Co.*, No. 96-0136-M, mem.Op. (D.N.M. Feb. 28, 1996) (denying remand of removed action based on availability of attorney's fees under New Mexico Unfair Claims Practice Act and Unfair Trade Practices Act. *See also 14A Wright v. Miller, Federal Practice and Procedure*, §3712, at 176-78, and authorities cited therein; *Foret v. Souther Farm Bureau Life Ins. Co.*, 918 F. 2d 534, 537 (5 Cir. 1990). The calculation also includes treble damages claims.

12. In addition to actual damages in this case, Plaintiffs are requesting "an amount sufficient to compensate Plaintiff [sic] for all compensatory and punitive damages, injuries, losses, attorneys' fees, costs, and interest recoverable under the law, including pre-judgment interest". *See Exhibit A, Prayer.*

13. The limits in the GEICO policy are \$25,000/\$50,000 for the three vehicles covered by that policy. Therefore, the potential coverage is \$75,000/\$150,000. *See Exhibit C, Declarations Page.*

14. Less than thirty (30) days have passed since Defendant GEICO was served a copy of the initial pleading on this matter. *See Exhibit B.*

15. By and through this Notice of Removal, GEICO removes all claims asserted against it on the basis of diversity jurisdiction, which is conferred upon this Court pursuant to 28 U.S.C. §§ 1332 and 1441.

16. Pursuant to 28 U.S.C. § 1446(d), written notice of the filing of this Notice of Removal is being concurrently served upon the Plaintiffs on this date.

17. Pursuant to 28 U.S.C. § 1446(d), GEICO is concurrently filing a Notice of Filing Notice of Removal in the State Court Action, a copy of which is hereto attached as Exhibit D without "Exhibit 1."

18. Defendant GEICO filed an answer in the State Court Action on July 11, 2017, a copy of which is hereto attached to this Notice as Exhibit E.

19. Pursuant to 28 U.S.C. § 1446(a) and D.N.M.LR-CIV. 81.1(a), all process, pleadings, and orders from the State Court Action will be filed with this Court in a separate Transmittal of State Court Record within twenty-eight days (28) of this Notice.

20. A Civil Cover Sheet for this Court is hereto attached as Exhibit F.

21. The matters in controversy exceed the sum or value of \$75,000.00, exclusive of interest and costs. Specifically, the Plaintiffs have alleged and has demanded the limits of uninsured motorist coverage.

22. WHEREFORE, Defendant GEICO gives notice that this case is removed from the Second Judicial District Court, County of Bernalillo, State of New Mexico, to the United States District Court for the District of New Mexico.

Respectfully submitted,

/s/ Meloney Perry

Meloney Perry

Stacy Thompson

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**ATTORNEYS FOR GEICO INDEMNITY  
COMPANY (AS TO THE EXTRA-  
CONTRACTUAL CLAIMS)**

-and-

/s/ John A. Frase

John A. Frase

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**ATTORNEYS FOR GEICO INDEMNITY  
COMPANY (AS TO CONTRACTUAL  
CLAIMS)**

Defendant's address:  
5260 Western Avenue  
Chevy Chase, Maryland 20815

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on the 12th day of July, 2017, I filed the foregoing electronically through the CM/ECF system, which caused the following parties or counsel to be served by electronic means, as more fully reflected on the Notice of Electronic Filing:

Bert Parnall  
PARNALL LAW FIRM, LLC  
PO Box 8009  
Albuquerque, New Mexico 87198  
*Attorney for Plaintiff*

/s/ Meloney Perry

Meloney Perry

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